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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,227	03/03/2004	Richard L. Perry	PERR.00001	4786

7590 06/14/2005
Law Office of Steven B. Leavitt
9914 Waterview Parkway
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EXAMINER

CHIN, PAUL T

ART UNIT PAPER NUMBER

3652

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/792,227

Applicant(s)

PERRY, RICHARD L.

Examiner

PAUL T. CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 March 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-19, drawn to a carrying device by hand, classified in class 294, subclass 137.
 - II. Claim 20, drawn to a method of transporting shoes, classified in class 280, subclass 619.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the process for using the product as claimed can be practiced with another materially different products such as ski binding devices and shoe safety straps.
3. During a telephone conversation with Steven Leavitt on June 1, 2005, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claim 20 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Information Disclosure Statement

4. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." However, the

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references (US 4,867,359 and 4,483,470) have been cited by the examiner on form PTO-892, they have been considered.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the housing member of textile woven flexible material" (Claims 4 and 14) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

6. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

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7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: applicant does not disclose the housing member made of "rigid plastic material" (claims 2 and 12), "textile woven flexible material" (claims 4 and 14), or "leather material" (claims 6 and 16) in the specification.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 10 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Specifically, applicant states on page 7, lines 18-20:

The tool portion 2 and 4 is adaptable for creating a hole in the shoe 30 and 32, to allow for permanently inserting the securing member 24 and 26 into the shoe 30 and 32, also seen in Figure 1.

It is not clearly understood as to how the "tool portion 2,4" is capable of inserting a hole in the shoe heel. Note that the well known shoe heel has been made with harden rubber to provide capability of supporting the entire weight of a person. Moreover, the provided tool portion (2,4) appears to be small and it is unclear as to how the "tool portion" alone would be capable of penetrating into the hardened heel without using any tool.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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11. Claims 8 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claimed languages of claims 8 and 18 are vague and indefinite. Applicant recites "the connecting strap being comprised of rope material" and it is unclear as to the particular meaning of "rope material".

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1 and 8, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Sittmann (3,936,063).

Sittmann (3,936,063) discloses a carrier for shoes comprising a connecting strap (11) or a rope, a pair of quick release members (19,21) having an engaging front portion and a heel portion (Figs. 4 and 5), and a pair of securing members having a receiving barrel portion (18) and a tool portion (17) to receive the engaging barrel portion, and a threaded coupling member (14), which can be considered as a housing member detachably mountable to the connecting strap.

14. Claims 1,8,10, and 11, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Matsushita (5,785,223).

Matsushita (5,785,223) discloses a carrier for shoes comprising a connecting strap (15) or a rope, a pair of quick release members having an engaging barrel front portion

(23,24,25) and a heel portion (21) and a pair of securing members having a receiving barrel portion (28) and a tool portion (22) to receive the engaging barrel portion, and an eyelet (40) and a receiver (19) assembly, which can be considered as a housing member, detachably mountable to the connecting strap.

Re claims 10 and 11, figures 4 and 6 show a pair of shoes and the tool portion is adaptable for attaching to a heel of each shoe.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 3-7 and 9-19, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sittmann (3,936,063) in view of Schwartz (5,255,947).

Sittmann (3,936,063), as presented in section 13 above, does not show that the housing member (14) is being made of plastic, woven textile, or leather. However, Schwartz (5,255,947) teaches a lifting strap (26,28) and the adjusters (36,38) or housing members being made of any flexible or semi-flexible materials such as plastic, leather, heavy gauge fabric, and the like. Accordingly, it would have been obvious to those skilled in the art to provide the flexible or semi-flexible materials such as plastic, leather, heavy gauge fabric on the housing member of Sittmann (3,936,063) as taught by Schwartz (5,255,947) to provide a rigid housing (for plastic) and a flexible housing (for leather or textile) enclosing the strap.

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Re claims 3,5,7,13,15, and 17, Sittmann (3,936,063) teaches a threaded coupling (14) capable of slight adjusting the connection with the strap (11) and the threaded means can be considered as the adjustable means.

Re claims 10 and 11, Sittmann (3,936,063) shows a shoe heel (10), but does not show a pair of shoes. Accordingly, it would have been obvious to those skilled in the art to provide another shoe heel with connecting assembly on the Sittmann (3,936,063) to provide a pair of shoes to a user for carrying together.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Emrich (3,889,399), Ozaki (5,904,056), Pruitt (4,774,775), and Wishnick (6,454,335) show a strap for carrying a pair of shoes.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read "Paul Chin". The signature is fluid and cursive, with a small mark at the end.

PAUL T. CHIN
Examiner
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